

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Silverleaf Resorts, Inc.	:	
d/b/a Resort Utilities	:	
	:	Docket No. 01-0827
Application for a certificate of Public	:	
Convenience and Necessity to provide	:	
sanitary sewer service in LaSalle County,	:	
Mission Township, Illinois, and to construct,	:	
own, operate and maintain necessary	:	
sewer and sanitary sewer treatment	:	
facilities in connection with the provision	:	
of such service, pursuant to Section 8-406	:	
of the Illinois Public Utilities Act.	:	

BRIEF OF SILVERLEAF RESORTS, INC.

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I. INTRODUCTION

Silverleaf Resorts, Inc., d/b/a Resort Utilities (“SRI”), is a publicly traded Texas corporation primarily engaged in the business of land development and timeshare resort businesses. Amended Verified Petition, ¶ 1. SRI seeks to provide water and sanitary sewer service at a charge to its timeshare development in Illinois called Fox River Resort. The issues before the Illinois Commerce Commission (“Commission”) are: (1) whether SRI is subject to the Commission’s jurisdiction; (2) if so, whether the requirements for obtaining Certificates of Public Convenience and Necessity have been met; (3) if certificates are granted, whether to approve the revenue requirement and tariff provisions proposed by SRI, as modified by Staff; and (4) whether SRI should be permitted to bill two customers – Silverleaf Club and Fox River Sales and Member Services – for water and sewer service provided to Fox River Resort. There is no material dispute between Staff and SRI on any of these issues.

Staff and SRI agree that the Commission does not have jurisdiction over SRI and therefore Certificates of Public Convenience and Necessity are not needed for SRI to provide water and sanitary sewer service at a charge to Fox River Resort. Under Illinois law, the provision of utility service is not for “public use” (and therefore is not subject to the Commission’s jurisdiction) where it is confined to specific privileged persons. Illinois courts and the Commission itself have repeatedly held that where a utility system is constructed for the use of the system’s owner, and is not used to provide service outside the system owner’s property, the utility system is not for “public use.” Here, it is undisputed that (1) SRI’s water and sewer systems were constructed solely in support of, and ancillary to, SRI’s primary business as a timeshare resort, (2) SRI has confined its provision of water and sewer services in Illinois to one of its own such timeshare resorts, Fox River Resort, (3) the general public is not permitted to use Fox River Resort, and therefore is not permitted to use the water and sewer

facilities at the resort, and (4) SRI has not held its water and sewer facilities out for public use. Accordingly, SRI's provision of utility service to Fox River Resort is not for "public use," the Commission does not have jurisdiction over SRI, and Certificates of Public Convenience and Necessity are not needed for SRI to provide water and sanitary sewer service at a charge to Fox River Resort.

Nevertheless, if the Commission were to assert jurisdiction over SRI, Staff and SRI agree that the requirements for certification set forth in Section 8-406 of the Public Utilities Act ("PUA") have been satisfied. Specifically, SRI has met the prerequisites to ensure adequate, reliable, and efficient water and sewer service to Fox River Resort; SRI is capable of efficiently managing, supervising, and financing the activities necessary to provide water and sewer service to the resort; and SRI's provision of water and sewer service to the resort is the least cost means of satisfying the service needs of Fox River Resort. Accordingly, if the Commission asserts jurisdiction over SRI, it should issue Certificates of Public Convenience and Necessity.

In addition to agreeing that the requirements for certification have been satisfied, SRI has agreed to accept Staff's recommended revenue requirement of \$150,085 for water service and \$400,908 for sewer service.¹ SRI also has agreed to accept all of Staff's proposed changes to SRI's tariffs.²

Finally, Staff and SRI agree that SRI should be permitted to bill two customers for water and sewer service at Fox River Resort – Silverleaf Club and Fox River Sales and Member Services. This two-customer billing approach is reasonable, practical, and economical given the unique nature of the timeshare business. It is also consistent with the manner in which Fox River

¹ SRI Ex. 3 (Westmoreland Amended Rebuttal) at 11.

² SRI Ex. 4 (Lahart Amended Rebuttal) at 13-14.

Resort is currently billed for electric service, and with SRI's utility operations in other states. Indeed, Corn Belt Energy bills Silverleaf Club and Fox River Sales and Member Services for electric service that it provides to Fox River Resort; and SRI bills Silverleaf Club and the functional equivalent of Fox River Sales and Member Services for water and sewer service it provides to timeshare resorts in other states. There is no legitimate reason for the Commission to reject SRI's two-customer billing proposal, which Staff fully supports.

II. PROCEDURAL BACKGROUND

On December 19, 2001, SRI filed a Verified Petition for a Certificate of Public Convenience and Necessity ("Verified Petition") to provide sanitary sewer service to Fox River Resort, a 180-acre timeshare resort developed by SRI. The Direct Testimony of Robert G. Levy, Vice President of Operations of SRI, accompanied the Verified Petition.

On May 10, 2002, SRI filed a Motion to Withdraw Verified Petition for Certificate of Public Convenience and Necessity ("Motion to Withdraw") on the grounds that it is not a "public utility" subject to the Commission jurisdiction under Sections 3-105 and 4-101 of the PUA and, therefore, a certificate is not necessary to provide sanitary sewer service at a charge to Fox River Resort. A Stipulation of Undisputed Facts entered into by SRI and the Staff of the Illinois Commerce Commission ("Staff") was submitted with the Motion to Withdraw. On May 22, 2002, Staff filed a Response to Motion to Withdraw Verified Petition for Certificate of Public Convenience and Necessity ("Staff Response") supporting SRI's Motion to Withdraw.

On July 15, 2002, a telephonic hearing was held where the testimony of Robert G. Levy was submitted. In addition, Mike Brown (Director of Engineering Development of SRI) and Harry J. White, Jr. (Chief Financial Officer of SRI) were asked questions by Staff and Hearing Examiner Jones.

Hearing Examiner Jones entered a Proposed Order on August 6, 2002, finding that SRI was not operating as a public utility and did not need a certificate of public convenience and necessity to provide sanitary sewer service to Fox River Resort. The Hearing Examiner therefore recommended that the Commission grant SRI's Motion to Withdraw. On August 19, 2002, SRI filed a Brief on Exceptions to the Hearing Examiner's Proposed Order asking only that the Proposed Order be revised to correct minor factual misstatements.

On October 29, 2002, the Commission rejected the Hearing Examiner's Proposed Order and entered an Interim Order holding that SRI was operating as a public utility and that a Certificate of Public Convenience and Necessity was needed to provide sewer service to Fox River Resort. The Commission therefore denied SRI's Motion to Withdraw. The Interim Order clearly specified that it was not final and was not subject to the Administrative Review Law.

Pursuant to the Hearing Examiner's request, on January 28, 2003, SRI filed an Amended Verified Petition seeking certification to provide water and sanitary sewer service to Fox River Resort (SRI previously had requested certification for sewer service only). SRI also filed Supplemental Testimony of Robert G. Levy (which was later amended on July 25, 2003) and the testimony of Matthew S. Ennis (CPA and Utility Regulatory Consultant), which proposed rates to be charged for water and sewer service at the resort. SRI proposed that it be permitted to charge two customers for water and sewer service at Fox River Resort (Silverleaf Club and Fox River Sales and Member Services), as SRI does at its other timeshare resorts where it provides water and sewer service. On February 13, 2003, SRI filed proposed tariffs for water and sewer service.

Staff filed its initial round of testimony on April 4, 2003, including the testimony of Mary H. Everson, Sheena Kight, and William D. Marr. Staff concluded that the Section 8-406

requirements for Certificates of Public Convenience and Necessity were satisfied. Staff, however, proposed adjustments to SRI's proposed rates and tariffs. In addition, Mr. Marr's testimony proposed that the individual timeshare members be billed for utility service at Fox River Resort, rather than the two customers (Silverleaf Club and Fox River Sales and Member Services) proposed by SRI.

On May 30, 2003, SRI filed Rebuttal Testimony of Edward L. Lahart (Executive Vice-President for Operations of SRI) and Julie Westmoreland (Utility Manager for SRI) – these two pieces of testimony were later amended on July 25, 2003. SRI agreed to accept Staff's proposals relating to the water and sewer rates, as well as Staff's proposed tariff changes, but SRI did not accept Mr. Marr's proposal to bill individual timeshare members for water and sewer service. SRI explained that, given the way its timeshare resorts operate, it would be difficult (if not impossible) to implement Mr. Marr's proposal.

On July 25, 2003, SRI filed Supplemental Rebuttal Testimony of Edward L. Lahart, Supplemental Rebuttal Testimony of Harry J. White, Jr., Amended Rebuttal Testimony of Julie Westmoreland, Amended Rebuttal Testimony of Edward L. Lahart, and Amended Supplemental Testimony of Robert G. Levy. SRI's testimony explained in more detail the problems that would result if the Commission were to adopt Mr. Marr's proposal to require SRI to bill individual timeshare members for utility service.

On October 22, 2003, Staff filed Rebuttal Testimony of William D. Marr. Based on the additional evidence submitted by SRI, Mr. Marr proposed that the Commission not assert jurisdiction over SRI because it is not operating as a public utility. In the event the Commission asserted jurisdiction over SRI, Staff dropped its proposal that SRI be required to bill individual timeshare members for water and sewer service at Fox River Resort and, instead, proposed that

the Commission adopt SRI's proposal to bill two customers (Silverleaf Club and Fox River Sales and Member Services). Staff's testimony set forth in detail why a two-customer billing approach is superior to the approach previously proposed by Staff (*i.e.*, Staff's proposal to require SRI to bill individual timeshare members for water and sewer services). If the Commission ultimately rejected SRI's two-customer proposal, as a third alternative, Staff proposed rates for individual billing of Fox River Resort timeshare members, Thousand Trails members, and Fox River Sales and Member Services buildings.

Staff filed Supplemental Rebuttal Testimony of William D. Marr on November 18, 2003, which clarified the proposed rates that Staff recommends SRI be required to charge customers under the two-customer billing approach. Staff explained that the two-customer approach is consistent with SRI's operations in other states.

On December 15, 2003, SRI filed Surrebuttal Testimony of Julie Westmoreland. SRI explained that it agreed with Staff's initial recommendation that the Commission not assert jurisdiction over SRI because it is not operating a utility for public use. SRI also agreed with Staff's alternate proposal that SRI bill two customers (Silverleaf Club and Fox River Sales and Member Services) for utility service at Fox River Resort in the event the Commission asserted jurisdiction over the company. SRI explained, however, that Staff's third proposal (which proposed rates for individual Fox River Resort timeshare members, Thousand Trails members, and Fox River Sales and Member Services buildings) created all of the same problems explained in SRI's previous testimony.

III. FACTUAL BACKGROUND

A. Silverleaf Resorts, Inc. (“SRI”)

SRI is in the business of marketing and selling Vacation Intervals (commonly known as “timeshares”). SRI’s principal activities consist of (1) developing and acquiring timeshare resorts; (2) marketing and selling one-week annual and biennial Vacation Intervals to new prospective owners; (3) marketing and selling upgraded Vacation Intervals to exiting SRI timeshare members; (4) providing financing for the purchase of Vacation Intervals; and (5) operating timeshare resorts, including operating the facilities used to provide water and sanitary sewer service to some of those resorts. SRI Ex. 1 (Levy Amended Supplemental) at 3.

SRI is the developer of Fox River Resort, which is a development located in LaSalle County, Mission Township, Illinois covering approximately 180 acres. SRI Ex. 1 (Levy Amended Supplemental) at 4. There are currently 186 timeshare units that receive water and sanitary sewer service at Fox River Resort. In addition, there are six (6) connections to RV Campsites, eighteen (18) cabins, three (3) housing department coin-operated washing machines and restrooms, three (3) registration restrooms, two (2) swimming pools and one (1) picnic area restroom, for a total of 219 service connections. SRI Ex. 3 (Westmoreland Amended Rebuttal) at 8.

SRI is the sole owner of the unsold timeshare units at Fox River Resort. SRI Ex. 1 (Levy Amended Supplemental) at 4. The timeshare units and other SRI amenities at Fox River Resort (including the water and sanitary sewer facilities) are used exclusively to serve Fox River Resort. *Id.* at 4, 5, 8, 9, 10.

Fox River Resort is not the only timeshare resort owned by SRI. SRI owns eleven other timeshare resorts in five different states. SRI Ex. 7 (White Supplemental Rebuttal) at 3. In

addition, SRI owns four water and sanitary sewer systems serving its developments located in Texas and three such systems serving its developments in Missouri. SRI Ex. 1 (Levy Amended Supplemental) at 8, 11. With respect to each utility system in Texas and Missouri, SRI has been certified by the Texas Commission on Environmental Quality (formerly known as the Texas Natural Resource Conservation Commission) and the Missouri Public Service Commission, respectively. *Id.* SRI does not bill individual timeshare members for utility service it provides to its other timeshare resorts; rather, SRI bills Silverleaf Club and the functional equivalent of Fox River Sales and Member Services – just as SRI proposes to do here. SRI Ex. 3 (Westmoreland Amended Rebuttal) at 10.

B. The Timeshare Business

A timeshare is a hybrid between a condominium and a hotel. SRI Ex. 4 (Lahart Amended Rebuttal) at 3-4; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 20-21. Like a condominium, a timeshare owner acquires title to the interior of a designated suite of rooms in a building on the resort property. *Id.* This property interest has value and is marketable. *Id.* However, a timeshare owner's interest in the living unit differs significantly from a condominium owner's because his/her right to use the unit is for only a very short duration. *Id.* A condominium owner typically lives in his/her unit year-round. *Id.* A timeshare owner, on the other hand, purchases his/her interest in a living unit to vacation in for one week every year or two years. *Id.* Outside of the designated one-week interval to which his/her ownership right applies, the timeshare owner has no legal interest in his/her living unit. *Id.* In other words, a timeshare member may not occupy his/her unit anytime he/she wishes – to the contrary, other timeshare members will be occupying the same unit during the other weeks of the year. *Id.* For example, as many as fifty-two (52) timeshare members could have an interest in the same unit

with each having the right to occupy the unit for one week out of the year. SRI Ex. 7 (White Supplemental Rebuttal) at 15; SRI Ex. 3 (Westmoreland Amended Rebuttal) at 5, 7. In this respect, a timeshare unit is like a hotel or other resort where an individual reserves the right to exclusively use a particular suite of rooms for a short period of time. SRI Ex. 4 (Lahart Amended Rebuttal) at 3-4; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 20-21. See also SRI Ex. 7 (White Supplemental Rebuttal) at 9-12.

The timeshare business, however, is much more complicated than simply reserving rooms. Pursuant to the Exchange Program, timeshare owners may exchange their annual occupancy week with another timeshare owner at the same resort or a timeshare owner at another SRI resort. SRI Ex. 4 (Lahart Amended Rebuttal) at 4; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 8. So, for example, a Fox River Resort timeshare member may choose to stay at his/her home base resort or a different SRI resort for his/her one week of the year, and timeshare members of other SRI resorts may choose to spend their one week vacation interval at Fox River Resort instead of their home base resort. *Id.*

The most important SRI benefit and the one most widely used by the timeshare members is the Bonus Time Program. Bonus Time is a program under which an SRI timeshare owner may reserve (subject to minimal restrictions to insure the availability of units for everyone) a unit at any of the twelve SRI resorts. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 8-9; SRI Ex. 7 (White Supplemental Rebuttal) at 4. In other words, when a person buys a timeshare at a particular SRI resort (such as Fox River Resort), in addition to the one-week interval they have purchased, they can choose to stay additional nights at any of the other SRI resorts (assuming availability and subject to certain restrictions). There are approximately 100,000 current SRI timeshare owners (approximately 8,700 of those people own timeshares at Fox River Resort).

SRI Ex. 6 (Lahart Supplemental Rebuttal) at 9. SRI's Bonus Time participation rate is over 50% – so, in any given year, approximately half (50,000) of the timeshare members will choose to stay at a resort other than (or in addition to) their “home base” resort (*i.e.*, the resort where they purchased their timeshare).³ SRI Ex. 6 (Lahart Supplemental Rebuttal) at 9; SRI Ex. 1 (White Supplemental) at 4.

Timeshare members also have “day usage” rights. This means that an SRI timeshare member can use the amenities (country club, swimming pool, etc.) at any of the twelve SRI resorts without booking an overnight stay. SRI Ex. 7 (White Supplemental Rebuttal) at 4-5; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 10-11. So, for example, a Fox River Resort timeshare member can use the amenities at Fox River Resort, or any of the other eleven SRI resorts, at any time without booking an overnight stay. *Id.* Similarly, timeshare owners at the other eleven SRI resorts can use the amenities at Fox River Resort at any time without booking an overnight stay. *Id.*

Significantly, the only people entitled to stay at the SRI resorts or enjoy the amenities of the resorts are timeshare members from the twelve SRI resorts, their families and guests. SRI Ex. 8 (Westmoreland Surrebuttal) at 4; Staff Ex. 4.00 (Marr Rebuttal) at 4. The only exception to this rule is Thousand Trails members, who are entitled to use the campsites and cabins but not the timeshare units. As SRI explained in response to data request WDM-3.01 (attached hereto as Exhibit A), in 1997, SRI purchased the property where Fox River Resort is now located from Thousand Trails. SRI and Thousand Trails entered an agreement requiring SRI to honor existing

³ The Lodge Getaway Resorts participating in the Bonus Time Program are: Hill Country Resorts, Holly Lake, Piney Shores Resorts, The Villages Resort, Timber Creek Resort, Fox River Resort, Lake O' The Woods and Apple Mountain Resort. The Club Destination Resorts participating in the Bonus Time Program are Oak N' Spruce Resort, Holiday Hills Resort, Ozark Mountain Resort, and Silverleaf Seaside Resort. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 9.

Thousand Trails members' privileges to use the campgrounds and cabins on the premises for a period of ten years from August 1997. See Attachment A. Thousand Trails members are part of Silverleaf Club and pay dues, albeit less than timeshare member dues. Staff Ex. 4.00 (Marr Rebuttal) at 13.

C. Silverleaf Club and Fox River Club

SRI does not operate Fox River Resort – or any of the other eleven timeshare resorts. Instead, Fox River Resort and the other eleven resorts are operated by Silverleaf Club as one system. SRI Ex. 4 (Lahart Amended Rebuttal) at 5; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 5. Silverleaf Club, a Texas non-profit corporation formed by SRI, is a management company responsible for operating, maintaining, and refurbishing Fox River Resort (and the other eleven resorts), and incurs all the costs associated with managing those resorts. SRI Ex. 4 (Amended Rebuttal) at 5; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 5; SRI Ex. 7 (White Supplemental Rebuttal) at 6. Silverleaf Club does not operate to gain a profit. SRI Ex. 4 (Lahart Amended Rebuttal) at 5, 9. Rather, it operates to recover only the actual costs associated with operating, maintaining, and refurbishing the twelve SRI resorts through yearly membership dues paid by timeshare members. *Id.* at 5.

Each of SRI's twelve resorts has its own local club, which has a board of directors with at least two local timeshare owners sitting on the board. SRI Ex. 7 (White Supplemental Rebuttal) at 7. The local club at Fox River Resort is called Fox River Club. *Id.* All of the local clubs at the SRI resorts are operated under a master club management contract (the "Master Club Agreement") by the master club, Silverleaf Club – *i.e.*, Silverleaf Club operates the twelve SRI resorts as a single entity. *Id.*; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 5. The primary role of the local clubs (including Fox River Club) is to serve as a liaison between timeshare members

and Silverleaf Club and between timeshare members and SRI. SRI Ex. 7 (White Supplemental Rebuttal) at 7. In other words, the local clubs provide one means of formal communication to Silverleaf Club and SRI management. *Id.*

D. Collecting Timeshare Membership Dues And Paying Resort Expenses

Each year Silverleaf Club management develops a combined operating budget for all of the SRI resorts. SRI Ex. 7 (White Supplemental Rebuttal) at 6; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 5. This budget is intended to cover all operating expenses (utilities, grounds maintenance, building maintenance, employees' salaries, etc.), taxes, depreciation, and so forth of *all* of the resorts. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 5-6. Common expenses (*i.e.*, general administrative, legal, accounting, etc.) are added to the combined operational expenses of the resorts to create the master budget. *Id.* Overall financial planning is done from this master budget. *Id.*; SRI Ex. 7 (White Supplemental Rebuttal) at 7; Att. HJW-3. Silverleaf Club does not allocate any part of its budget to a particular club (such as Fox River Club) for direct recovery through the timeshare members of that club. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 6. As such, Silverleaf Club cannot identify a specific amount that is being allocated to the cost of water or sewer service at a particular resort (such as Fox River Resort), nor can it identify a specific amount that is allocated to any other cost to operate a particular resort. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 7.

Silverleaf Club recovers the costs it incurs in operating, maintaining, and refurbishing the SRI resorts (including Fox River Resort) through membership dues paid by the timeshare members. SRI Ex. 4 (Lahart Amended Rebuttal) at 5. Silverleaf Club maintains a billing and collection system for the local clubs, which is maintained at the corporate headquarters in Dallas, Texas. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 11. Per the Master Club Agreement, all

billings and collections for dues is done through the Dallas corporate offices – not through the offices of the separate resorts, such as Fox River Resort. *Id.* Dues are billed and funds received by Silverleaf Club – Fox River Club (and the other local clubs) do not collect the dues from timeshare members or pay any resort expenses. *Id.* The dues collected are commingled by Silverleaf Club pursuant to the Master Club Agreement and used to pay all operating expenses of all resorts. *Id.* This way, no matter which SRI resort a timeshare owner travels to during the year (via the Exchange, Bonus Time, or Day Usage Programs), his/her dues contribute to that resort's operating expenses and also contribute to the expenses of his/her home base resort to the same extent as the dues of every other SRI timeshare owner (*id.*) – which is only fair given that through the Exchange, Bonus Time, and Day Usage Programs, SRI timeshare owners can choose to stay at any SRI resort.

While Silverleaf Club's goal is to recover the average costs of the resort operations, the dues are primarily driven by market constraints. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 6. In other words, competition from other timeshare companies ensures that membership dues are not excessive or arbitrarily raised. *Id.* SRI membership dues are not reset on a regular basis as expenses change at a specific resort; rather, dues are set system-wide (*i.e.*, nationwide) and are changed only if it is necessary to do so system-wide. *Id.* at 6-7. In fact, dues are very rarely adjusted. For example, SRI's dues remained the same for the ten years from January 1993 through January 2003. *Id.* at 7. Specifically, for the ten years ending January 2003, Silverleaf Club's dues for regular annual timeshare intervals were \$49.98 per month for every timeshare owner at every SRI resort property regardless of location. *Id.* In January 2003, the dues were increased 10% to \$54.96. *Id.* The dues for biannual timeshare owners (those entitled to occupy a vacation unit for one week every two years) were \$24.99 per month (for the ten years ending

January 2003), at which time they were increased 10% to \$27.48. *Id.* The 2003 dues increase was an across-the-board 10% increase that was not targeted at any specific expense or resort. *Id.*

Notably, SRI has indicated that Silverleaf Club has no intention of increasing the system-wide monthly membership dues as a result of this proceeding (SRI Ex. 6 (Lahart Supplemental Testimony) at 26) – again, dues typically are not changed merely because one resort’s operational expenses increase (SRI Ex. 4 (Lahart Amended Rebuttal) at 6). Thus, even if SRI begins billing Silverleaf Club for water and sanitary sewer service, the timeshare members will continue to pay the same amount in dues. Moreover, in the event Silverleaf Club were to ever raise membership dues based on the overall increase in the cost of operating the twelve resorts, those costs would be spread across all timeshare members at all SRI resorts. SRI Ex. 4 (Lahart Amended Rebuttal) at 6.

There are many reasons why SRI – and most other timeshare resorts – has chosen to adopt a commingling of dues and pooling of expenses approach, rather than operating each resort property on a stand-alone basis.

First, economies of scale from bulk purchases. SRI Ex. 7 (White Supplemental Rebuttal) at 8.

Second, lower administrative overhead through centralizing common services. *Id.*

Third, and the driving force behind the decision to commingle dues and pool expenses, is the Exchange and Bonus Time Programs. SRI Ex. 7 (White Supplemental Rebuttal) at 8; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 8-10. Because of the Exchange and Bonus Time Programs, timeshare owners are not tied to any specific property – in fact, they are encouraged to avail themselves of all of SRI’s resort properties. *Id.* Given that over 50% of SRI’s 100,000 timeshare members use the Bonus Time Program (and, hence, may stay at a resort other than or

in addition to their “home base” resort during any given year, and may stay at several different resorts over the many years that they own their timeshare), SRI does not allocate costs or set dues on an individual resort basis. *Id.*

Fourth, the timeshare business is highly competitive. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 6. If dues were set to recover the full costs of operating individual properties, the dues would be significantly higher than they are under the current system, would be highly variable, and would fluctuate greatly on a seasonal basis (*i.e.*, dues would have to be reset or raised on a set basis as operating expenses at the resort increased). This would have an adverse impact on SRI’s business. *Id.* To avoid this, Silverleaf Club sets fixed membership dues on a system-wide basis – not on a resort-by-resort basis. *Id.*

Fifth, the commingling of dues and pooling of expenses approach utilized by SRI is the industry practice. *Id.*

E. Timeshare Contracts

To purchase a timeshare, a buyer enters into a Contract for Sale (“Contract”) with SRI giving the buyer the right to occupy a timeshare unit for one week out of every one or two year(s), and the right to use the other amenities at the SRI resorts, *i.e.*, swimming pool, hiking trail, tennis courts, etc. SRI Ex. 4 (Lahart Amended Rebuttal) at 10; SRI Ex. 6.1. In exchange, the purchaser of the timeshare has certain obligations, including the obligation to pay monthly membership dues. *Id.*

The state-approved sales Contract – which timeshare members voluntarily enter when they purchase their timeshare vacation interval – gives timeshare members full knowledge of the Silverleaf Club system and the manner in which monthly membership dues are set. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 25; Attachment HAW-2; Staff Ex. 4.00 (Marr Rebuttal) at 18-

19. The disclosures in the state-approved Contract show that the monthly membership dues collected by Silverleaf Club will be used to pay the operating expenses (including utilities) of all the SRI resorts – *i.e.*, utility service is one of the many benefits included in the purchase of a timeshare unit and the payment of monthly membership dues. *Id.* The state-approved Contract also makes clear that the apportionment of all operating costs occurs at the Silverleaf Club level – not the local club level; thus, Fox River Resort timeshare members are only charged for their proportionate share of the common overhead operating expenses during their stay. *Id.* If prospective SRI timeshare members do not like the Contract terms or the dues structure, they do not have to purchase a timeshare from SRI; rather, they have a multitude of timeshare, hotel, motel, and resort options to choose from to satisfy their vacation needs. *Id.*; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 13.

F. Utility Operations At Fox River Resort

SRI provides water and sewer service to the buildings and areas located within the geographic boundaries of Fox River Resort. Ex. 1 (Levy Amended Supplemental) at 11. The timeshare units, RV campsites, and all other common amenities at Fox River Resort are dedicated for use exclusively by Fox River Resort timeshare members, with no usage by the general public permitted – which means that the general public is not permitted to use the water or sanitary sewer services at Fox River Resort. SRI Ex. 8 (Westmoreland Surrebuttal) at 4; Staff Ex. 4.00 (Marr Rebuttal) at 4. SRI indicates that it has no plans to provide water or sanitary sewer service to anyone outside of Fox River Resort or to any other entity. Ex. 1 (Levy Amended Supplemental) at 13; Staff Ex. 4.00 (Marr Rebuttal) at 4.

Corn Belt Energy provides electric service to Fox River Resort and currently bills Silverleaf Club (not individual timeshare members) and Fox River Sales and Member Services

for that service. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 22; SRI Ex. 3 (Westmoreland Amended Rebuttal) at 6. SRI seeks to charge – just as Corn Belt Energy does – Silverleaf Club and Fox River Sales and Member Services for the water and sewer service it provides. There is nothing in the record indicating that the provision of water and sewer service is sufficiently different from the provision of electric service to justify a distinction in billed customer classes.

IV. ARGUMENT

A. The Commission Does Not Have Jurisdiction Over SRI Because It Is Not Operating A Utility For Public Use.

Section 5/4-101 of the PUA grants the Commission general supervision of all public utilities. A “public utility” is defined in relevant part as “every corporation . . . that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in (a) the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water or light . . . ; or (b) the disposal of sewerage.” 220 ILCS 5/3-105. In determining whether SRI is a “public utility” subject to the Commission’s jurisdiction, the question is whether SRI’s provision of water and sewer service to its own private resort, Fox River Resort, is “for public use.”

Although in its Interim Order the Commission held that SRI was operating as a public utility, the Commission is not bound by its previous decision on this point. *Mississippi River Fuel Corp. v. Commerce Commission*, 116 N.E.2d 394, 396-97 (1955) (holding that, although the Commission had made a previous finding that the gas company was not a public utility, it was not prevented from making a contrary finding in a subsequent hearing, since orders of the Commission are not res judicata). SRI has submitted extensive testimony explaining its operations which was not available to the Commission when it entered the Interim Order. Based

on this additional evidence, and the Commission's recent decision in *Mancuso Investment Corp.*, Docket No. 02-0781 (Sept. 30, 2003), SRI urges the Commission to find that SRI is not operating as a public utility.

Illinois courts have held that “[t]he mere fact that the thing sold by a company is water or gas or electricity or telephone service, such as are ordinarily sold by public utility companies, does not of itself render the seller a public utility.” *Mississippi River Fuel Corp.*, 116 N.E.2d 394, 398 (1953). Rather, “it is necessary that all persons have an equal right to the use, and such use must not be confined to specific privileged persons to make it a public use within the meaning” of the PUA. *Id.* at 399 (quoting *Evansville Telephone Co. v. ICC*, 118 N.E. 760, 762). See also *Macon County Telephone Co. v. Bethany Mutual Telephone Ass’n*, 110 N.E. 334, 335-36 (1915) (holding that a mutual telephone association, which by its charter was organized solely to render service to its own members and did so, was not a public utility within the meaning of the act); *Enberg v. Park City Mobile Home, Inc.*, I.C.C. Docket No. 93-0091, 1994 WL 120881, *4 (March 23, 1994) (finding that owner of mobile home park, “[b]y confining itself to supplying water and sanitary sewer service to its own property, as opposed to the public at large . . . does not fit within the definition of public utility in Section 3-105 of the Act and is not subject to regulation by the Illinois Commerce Commission”).

The Commission – citing the Illinois Supreme Court's decisions in *Highland Dairy Farms Co. v. Helvetia Milk Condensing Co.*, 139 N.E. 418 (1923) and *Mississippi River Fuel Corp.*, 116 N.E.2d 394 – set forth factors which indicate that water and/or sewer facilities are *not* being utilized for “public use.” *Mancuso*, at 7-9. Among those factors are the following: (1) “the subject water system had been constructed for the use of the system's owner[]”; (2) the owner “did not hold their facilities out for public use”; (3) the owner “has not sought to offer

water and sewer services outside” the owner’s property; (4) the owner does not “plan to offer services to additional customers in the future”; (5) the owner “consistently confined its service to specific contract customers and [had] done nothing to convey the impression of general public service”; and (6) “utility-like operations are only ancillary to [the owner’s] primary business.”

Mancuso at 7-8.

As explained further below, *Mancuso* – where the Commission set forth these factors and found that the owner of a mobile home park who provided water and sewer service to tenants of that park was *not* operating as a public utility – is factually and legally indistinguishable from this case. As a matter of sound regulatory policy, the Commission should treat the two in a consistent manner and find that SRI is not operating as a public utility.

Staff and SRI agree that the water and sewer systems at Fox River Resort are not owned and operated for “public use” within the meaning of Section 3-105 of the PUA; and, therefore, SRI is not subject to the Commission’s jurisdiction and Certificates of Public Convenience and Necessity are not needed for SRI to provide water and sanitary sewer service at a charge to Fox River Resort. This conclusion is based on the following undisputed facts:

- SRI’s water and sewer systems were constructed at Fox River Resort because utility service was not available from any third party utilities – *i.e.*, no other entity was capable or willing to provide water and sewer service to the resort. SRI Ex. 1 (Levy Amended Supplemental) at 7-10; Staff Ex. 4.00 (Marr Rebuttal) at 8.
- SRI’s water and sewer systems were constructed solely in support of, and ancillary to, SRI’s primary non-utility business as a timeshare resort. SRI Ex. 1 (Levy Amended Supplemental) at 7-10; Staff Ex. 4.00 (Marr Rebuttal) at 8.
- SRI is the owner of the Fox River Resort unsold timeshare units and utility systems, and has no intention of transferring ownership of any part of the Fox River Resort to another entity. SRI Ex. 1 (Levy Amended Supplemental) at 4; Staff Ex. 4.00 (Marr Rebuttal) at 4, 8.
- SRI has confined its provision of water and sewer services in Illinois to Fox River Resort. Ex. 1 (Levy Amended Supplemental) at 8-9; Staff Ex. 4.00 (Marr

Rebuttal) at 8. SRI has no plans to provide water or sewer service to anyone outside of Fox River Resort or to any other entity. SRI Ex. 1 (Levy Amended Supplemental) at 13; Staff Ex. 4.00 (Marr Rebuttal) at 9.

- The timeshare units, RV campsites, cabins, and all other common amenities at Fox River Resort are dedicated exclusively for use by timeshare members. Staff Ex. 4.00 (Marr Rebuttal) at 4. The general public is not permitted to use Fox River Resort (SRI Ex. 1 (Levy Amended Supplemental) at 13-15; Staff Ex. 4.00 (Marr Rebuttal) at 9), and therefore is not permitted to use the water and sewer facilities at the resort.
- SRI has not held its water and sewer facilities out for public use. Staff Ex. 4.00 (Marr Rebuttal) at 8.
- A timeshare owner's interest in the living unit is of short duration (generally only one week out of every one or two years); thus, for purposes of utility service, it is more akin to staying at a hotel than to a long-term occupation of a typical residential or commercial space. SRI Ex. 1 (Levy Amended Supplemental) at 13; Staff Ex. 4.00 (Marr Rebuttal) at 4, 8. The utility services provided by SRI to Fox River Resort are part and parcel of the rights the timeshare owners receive when entering into a contract for the sale of a timeshare unit. Staff Ex. 4.00 (Marr Rebuttal) at 9. In fact, the contract for sale provides that utility expenses will be covered in the monthly membership dues paid to Silverleaf Club, which the timeshare owner agrees to pay as a condition of purchasing a timeshare interest at Fox River Resort. SRI Ex. 7 (White Supplemental Rebuttal) at 16; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 19. Thus, timeshare owners can protect their own interests by private contract. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 19; SRI Ex. 6.1; Staff Ex. 4.00 (Marr Rebuttal) at 7-8.

Based on these facts, Staff witness William Marr explained that

SRI does not, and will not, offer water and sewer service to the general public. SRI's provision of water and sewer service to the Fox River Resort does not constitute service to the general public. SRI's actions in providing water and sewer service to a limited group, such as the Fox River Resort, cannot properly be characterized as the devotion of its property to public use within the meaning of the Act. SRI never professed to devote its property to public use. Since SRI proposes to provide water and sewer services to the Fox River Resort only and not to the general public, it will not be operating as a public utility.

Staff Ex. 4.00 (Marr Rebuttal) at 8. SRI whole heartedly concurs with William Marr's conclusion.

Significantly, when the Commission entered its Interim Order, it did not have the above facts necessary to fully understand SRI's operations and, in fact, its decision was based on several misconceptions about SRI and the timeshare industry. For example, the Factual Background section of the Interim Order incorrectly states that "Silverleaf Club will simply pass [the utility] charges through to the [Fox River Resort] time-share holders as part of the flat monthly fee" (Interim Order at 2), and the Analysis and Conclusions section of the Interim Order incorrectly states that "the time-share owners at Fox River Resort will be billed for water and sewer service as part of a monthly membership fee assessed by Silverleaf Club" (Interim Order at 3). Of course, as explained above, the cost to provide utility service to Fox River Resort will not be tagged onto the Fox River Resort membership dues as the Interim Order assumes. That is not how membership dues are set. SRI membership dues are set on a *system-wide* (*i.e.*, nationwide) basis to recover the average cost of operating the twelve SRI resorts. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 6, 12-13. Membership dues are not adjusted simply because the expense to operate one resort increases, but rather are adjusted only if necessary to do so system-wide. *Id.* Moreover, while membership dues are set with the goal of recovering the average costs of operating the resorts, they are primarily driven by market constraints. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 6. In the highly competitive timeshare business, SRI cannot arbitrarily pass large water and sewer bills to timeshare owners under the guise of membership dues. If it did, existing and potential timeshare owners would choose to go elsewhere for their vacation needs.

Perhaps more troubling, the Commission's Interim Order incorrectly assumes that timeshare owners are somehow captured customers that "would not be protected from potentially excessive rates that could be unilaterally imposed on them." Interim Order at 4. But, timeshare

members become timeshare members *voluntarily* – they are not captured customers – and timeshare members have several protections against excessive membership dues. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 13; Staff Ex. 4.00 (Marr Rebuttal) at 8.

For example, the timeshare members’ contracts with SRI provide that utility service will be included in the monthly membership dues and the amount of the membership dues is fully disclosed to the timeshare members upfront; thus, timeshare members can protect themselves by private contract. Staff agrees. Staff Ex. 4.00 (Marr Rebuttal) at 8 (“timeshare owners can protect their own interests by the private contracts”). Moreover, as alluded to above, competition in the timeshare industry prevents membership dues from being excessive. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 13. No one is forced to purchase a timeshare at Fox River Resort; rather, there are several timeshare resort options available to potential purchasers, and based on the costs and amenities of those resorts, potential purchasers choose which one is right for them. *Id.* Frequently or arbitrarily raising dues would be bad business practice because, if it costs too much to purchase a timeshare at Fox River Resort, potential timeshare members can simply buy a timeshare from some other entity or not at all. Simply put, timeshare members can protect themselves by simply going elsewhere for their vacation needs.

In short, the Interim Order is based upon the erroneous conclusion that timeshare members need the Commission’s protection from unreasonably high water and sewer rates that might be passed along in their membership dues. Now that extensive discovery and testimony has been submitted in this docket, it is clear that there is not one scintilla of evidence to support that conclusion.

Notably, the record here provides a more compelling case that SRI is *not* operating a utility for “public use” than several other cases where Illinois courts and/or the Commission held there was no “public use.”

In *Mississippi River Fuel Corp.*, 116 N.E.2d at 395, for example, the Commission held that a fuel company, which sold natural gas for resale to public utilities and to certain industrial customers under individual contracts, was a public utility. The question before the Illinois Supreme Court was “whether [Mississippi’s] direct sales of gas to twenty-three industries . . . render it a public utility within the meaning of the” PUA, “so as to make it subject to the jurisdiction of the” Commission. *Id.* at 396. The Illinois Supreme Court held that it did not, stating: “It seems clear to us the Mississippi has consistently and with great care confined its industrial gas sales to specific and selected customers, and has done no act by which it has given the reasonable impression that it was holding itself out to serve gas to the public, or to any class of the public, generally.” *Id.* at 399.

In *Highland Dairy Farms Co.*, 139 N.E. at 419, Highland Dairy Farms Company filed a complaint with the Commission against Helvetia Milk Condensing Company and Highland Brewing Company, alleging that the two companies were jointly engaged in furnishing water as a public utility, but had refused to provide it water service. The defendants – because of the difficulty they experienced securing water for the operation of their businesses – had constructed a water plant, sharing the expenses equally and agreeing on an equal division of water. *Id.* at 419. The defendants never attempted to procure patrons for water supplied through their pipes (and, in fact, discouraged persons or concerns from applying for such service), but ultimately allowed 16 persons or concerns to connect with their pipes. *Id.* In one or two instances where some mutual advantage appeared, defendants allowed others to connect with their pipes and use

the water. *Id.* Connections also were made with certain residences, some being those occupied by relatives of defendants' officers. *Id.* The Commission dismissed the complaint finding that the two companies were not operating as a public utility and therefore were not subject to the Commission's jurisdiction. *Id.* In affirming the Commission's decision, the Illinois Supreme Court held that "the weight of the evidence shows that the water plant was constructed for private use, and fails to show that [defendants] held themselves out as an agency or business for supplying the public with water." *Id.* at 420.

In *Mancuso*, Mancuso Investment Corporation ("Mancuso") filed a request for a declaratory ruling that it was not a public utility, and in the alternative requested a Certificate of Public Convenience and Necessity to operate as a public utility. *Mancuso*, at 1. Mancuso owned and managed a mobile home park, known as Mancuso Village Park, located in the Village of New Millford, Illinois. *Id.* Mancuso also owned and operated water and sanitary sewer facilities located in Mancuso Village Park. *Id.* Mancuso argued – as SRI does here – that it could not be considered a public utility under the Act because it did not operate water and sewer facilities for "public use;" rather, Mancuso provided service "only within the mobile home Park and only to its own tenants."⁴ *Id.* at 2. The Commission ultimately held that Mancuso's water and sewer systems were not operated for public use because (1) "the water and sewer systems were originally designed for, and incident to, the Park's principal business as a lessor of mobile home lots, and those systems have not been expanded," and (2) Mancuso had not "tried to provide utility-like services to any property not originally owned by them within the Park, or any property outside of the Park, and Mancuso has no intention to do so in the future." *Id.* at 10. See

⁴ Notably, Mancuso (unlike SRI) also provided water and sewer service to "a limited number of unaffiliated owners of mobile home sites formerly owned by Mancuso (or its predecessors)." *Mancuso* at 2. While still not constituting a "public use," Mancuso's provision of water and sewer service was markedly more "public" than SRI's here.

also *Enberg*, 1994 WL 120881, * 4 (holding that owner of mobile home park, “[b]y confining itself to supplying water and sanitary sewer service to its own property, as opposed to the public at large . . . does not fit within the definition of public utility” and “is not subject to regulation by the” Commission).

Mancuso, *Mississippi River Fuel Corp.*, *Macon County Telephone Co.*, and *Enberg* are factually and legally indistinguishable from this case – if anything, SRI presents an even stronger case that it is not a public utility. Like the corporations in those cases, SRI confines its provision of water and sewer services to specific privileged persons and to its own private property, as opposed to the public at large. As a matter of sound regulatory policy, the Commission should act in a consistent manner and find that SRI is not a “public utility” within the meaning of the PUA and Certificates of Public Convenience and Necessity are not needed for SRI to provide water and sanitary sewer service at a charge to Fox River Resort.⁵

B. The Requirements For Certification Have Been Met

If the Commission rejects the parties’ position on jurisdiction (which it should not do) and requires SRI to obtain Certificates of Public Convenience and Necessity, Staff and SRI agree that all of requirements for certification have been met. As required by Section 8-406 of the PUA, the unrefuted evidence establishes that: (1) SRI’s provision of water and sewer service “is necessary to provide adequate, reliable, and efficient service to [Fox River Resort] and is the least-cost means of satisfying the service needs of [Fox River Resort]”; (2) SRI “is capable of efficiently managing and supervising” the activities necessary to provide water and sewer service

⁵ Although SRI has no plans to do so, if it chooses to provide water and sanitary sewer service beyond the boundaries of Fox River Resort, it will inform the Commission prior to providing any such service and, if the Commission deems necessary, SRI will file a Petition for Certificates of Public Convenience and Necessity.

to Fox River Resort; and (3) SRI “is capable of financing” the operations necessary to provide water and sewer service to Fox River Resort.

First, SRI’s provision of water and sewer service is necessary for the provision of adequate, reliable, and efficient water and sanitary sewer service to Fox River Resort. SRI Ex. 1 (Levy Amended Supplemental) at 8. There is no other entity that is willing or able to provide Fox River Resort with water or sanitary sewer service. *Id.* As the developer of Fox River Resort, SRI evaluated other alternatives to providing water and sanitary sewer service to the resort, and determined that none of those alternatives would meet the service needs of Fox River Resort adequately, reliably, and efficiently. *Id.*

Second, SRI is capable of providing adequate, reliable, and efficient service to Fox River Resort. SRI Ex. 1 (Levy Amended Supplemental) at 8. SRI’s existing water and sanitary sewer facilities were designed, installed, tested, and inspected to meet the needs of Fox River Resort. *Id.* Those facilities currently serve, and are sufficient to continue serving, the area for which certification is requested (*i.e.*, Fox River Resort), including the existing timeshare units, the timeshare units to be constructed by 2005, the cabins and campgrounds, the coin-operated washing machines and restrooms, the registration restrooms, the swimming pools, and the picnic area restroom.⁶ *Id.* at 9. If certificates are deemed necessary and granted, SRI will continue to provide adequate, reliable, and efficient service to Fox River Resort. *Id.* SRI’s ability to do so is evidenced by its provision of such services to its resorts in other states.⁷ *Id.* at 10.

⁶ The water and sewer systems in place today at Fox River Resort are adequate for the foreseeable future. No major capital improvements are anticipated. The water and sewer systems will only be expanded in the future as needed to match any expansion in timeshare unit buildings and supporting facilities. Any utility improvements will have all required state approvals before construction is commenced. SRI Ex. 1 (Levy Amended Supplemental) at 9, 11.

⁷ Silverleaf Resorts is not requesting permission to construct additional facilities at this time, because such facilities are not needed to provide adequate, reliable, and efficient service to Fox River Resort. SRI Ex. 1 (Levy Amended Supplemental) at 9.

Third, SRI's ownership, operation, and maintenance of the water and sanitary sewer facilities is the least-cost means of satisfying the service needs of Fox River Resort. SRI Ex. 1 (Levy Amended Supplemental) at 9. SRI evaluated other alternatives to providing water and sanitary sewer service to Fox River Resort and determined that SRI's ownership, operation, and maintenance of the water and sanitary sewer facilities would be the least-cost means of adequately and reliably meeting the service needs of Fox River Resort. *Id.* SRI currently has facilities in place to serve the area for which certification is sought (*id.*) and, as explained above, those facilities are sufficient to meet the service needs of Fox River Resort. SRI Ex. 1 (Levy Amended Supplemental) at 4-8. It is most cost-efficient for SRI, which already has facilities in place, to provide water and sanitary sewer service to the Fox River Resort. *Id.* at 9. If certificates are granted, duplication of facilities and unnecessary costs will be avoided. *Id.*

The three nearest municipalities with water and/or sewer systems are the City of Marseilles, the City of Ottawa, and the City of Somonank, each of which is approximately 15 miles from Fox River Resort. SRI Ex. 1 (Levy Amended Supplemental) at 10. The cost of extending water and sewer service from these municipalities (assuming rights-of-way easements could even be timely obtained) would be prohibitively expensive and the cost of maintaining these extended lines would be great. *Id.* Moreover, service reliability for such a long extension serving a small service load would be questionable at best. *Id.* It is doubtful SRI could generate enough water-borne waste to fill a 15-mile transmission line and maintain an acceptable aerobic waste stream. *Id.* A rural sewer line that long would be subject to a higher degree of environmental hazard than a line in an urban environment. It would be a greater risk to state waters. *Id.* at 10.

Fourth, SRI has the experience and skill to efficiently manage and supervise the activities necessary to provide water and sanitary sewer service to Fox River Resort. SRI Ex. 1 (Levy Amended Supplemental) at 10. SRI's expertise is evidenced by its proven track record. *Id.* SRI has constructed, owned, operated, and maintained four water and sanitary sewer systems that serve SRI developments located in Texas; and SRI has constructed, owned, operated, and maintained three water and sanitary sewer systems that serve SRI developments located in Missouri. SRI Ex. 1 (Levy Amended Supplemental) at 10.

Fifth, SRI is capable of financing the operations necessary to provide water and sanitary sewer service to Fox River Resort. SRI Ex. 1 (Levy Amended Supplemental) at 11. SRI has access to the necessary funds to support its provision of water and sanitary sewer service to Fox River Resort. *Id.* While SRI rates are set in each state in which it operates on a state-by-state basis, SRI is one company. *Id.* Company-wide resources will be drawn on as needed for the benefit of the Illinois utility system when, and if, capital improvements are needed. *Id.*

Based on the foregoing facts, Staff and SRI agree that the certification requirements of Section 8-406 are met, and the Commission should issue SRI Certificates of Public Convenience and Necessity to provide water and sanitary sewer service to Fox River Resort, assuming such certificates are necessary.

C. Billing For Water And Sewer Service At Fox River Resort

1. SRI Should Be Permitted To Bill Two Customers For Water And Sanitary Sewer Service At Fox River Resort.

The primary position of SRI and Staff regarding how SRI should bill customers at Fox River Resort is the same – both agree that SRI should be permitted to bill two customers for water and sanitary sewer service at the resort: Silverleaf Club and Fox River Sales and Member Services. SRI Ex. 1 (Levy Amended Supplemental Testimony) at 13; Staff Ex. 4.00 (Marr Rebuttal) at 2. Silverleaf Club (the non-profit corporation that operates, maintains, and incurs all the costs associated with Fox River Resort and SRI’s other eleven resorts) would be billed for water and sewer service to the timeshare units, the RV campsites, the cabins, and other buildings used in the operation of the resort (*i.e.*, all the facilities used exclusively by timeshare members). SRI Ex. 1 (Levy Amended Supplemental Testimony) at 13. Fox River Sales and Member Services (which is not a separate entity from SRI, but rather is the timeshare sales department within SRI, SRI Ex. 1 (Levy Amended Supplemental) at 14) would be billed for water and sewer service to the buildings on the premises where the sale of timeshare units takes place and where tours of the premises are arranged. *Id.* at 14. Billing Silverleaf Club and Fox River Sales and Member Services separately assures that the costs associated with providing water and sanitary sewer service to the areas of the resort used exclusively for the *sale* of timeshare units will not be paid by the non-profit management company, Silverleaf Club. *Id.* at 14-15. Rather, the for-profit corporation, SRI, will incur those costs. *Id.* at 15.

While Staff originally proposed that SRI bill individual timeshare members for utility service, after reviewing SRI’s subsequent testimony, Staff now agrees that the two-customer

billing approach is proper.⁸ Staff Ex. 4.00 (Marr Rebuttal) at 10-30. Among other reasons, billing Silverleaf Club and Fox River Sales and Member Services is reasonable given the hotel-like characteristics of timeshare resorts. Silverleaf Club is obtaining the water and sewer services for the benefit of the Fox River Resort timeshare members much the same as a hotel purchases utility services for the benefit of its guests. SRI Ex. 4 (Lahart Amended Rebuttal) at 10. Just like hotel occupants, timeshare members do not live in their units; rather, they only vacation there for one week out of every one or two years – and, under the Bonus Time Program, many timeshare members will stay at Fox River Resort for only two or three days. SRI Ex. 3 (Westmoreland Amended Rebuttal) at 13; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 20-22; SRI Ex. 7 (White Supplemental Rebuttal) at 9-10. Just as hotels are not required to directly bill weekly occupants for utility service, SRI should not be required to directly bill timeshare members for utilities consumed during their short stay at the resort – instead, SRI should be permitted to bill the entity providing the resort accommodations, Silverleaf Club. *Id.*

Significantly, SRI timeshare owners are not directly billed for any other utility services. For example, Corn Belt Energy currently bills Silverleaf Club (not individual Fox River Resort timeshare members) and Fox River Sales and Member Services for the electric service it provides to Fox River Resort. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 22; SRI Ex. 3 (Westmoreland Amended Rebuttal) at 6, 10. Moreover, SRI does not directly bill timeshare members for the water and sewer service it provides to its other resorts. SRI Ex. 3 (Westmoreland Amended Rebuttal) at 10. Rather, in Texas and Missouri, SRI is permitted to bill

⁸ In their testimony, SRI and Staff set forth in great detail why it would not be reasonable, practical, or economical to require SRI to directly bill individual Fox River Resort timeshare members for utility service. SRI Ex. 3 (Westmoreland Amended Rebuttal) at 7-10; SRI Ex. 4 (Lahart Amended Rebuttal Testimony) at 9-13; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 13-20, 22-26; SRI Ex. 7 (White Supplemental Rebuttal Testimony) at 10-17; Staff Ex. 4.00 (Marr Rebuttal) at 10-30. Those reasons are explained in more detail in Part IV.C.2 below.

two customers (Silverleaf Club and the functional equivalent of Fox River Sales and Member Services) for the water and sewer service it provides, just as SRI proposes to do here. *Id.*

2. Staff's Alternative Billing Proposal Should Be Rejected

In the event the Commission determines that SRI is a public utility and rejects Staff's and SRI's recommendation to adopt a two-customer billing approach, Staff proposes a third alternative. Staff's third alternative proposal would essentially require SRI to individually bill timeshare members, Thousand Trails members, and Fox River Sales and Member Services for utility service. Staff Ex. 4.00 (Marr Rebuttal) at 30.

Ironically, Staff itself recognizes that any requirement that SRI bill individual timeshare members is fatally flawed – which is precisely why Staff's primary proposal is to permit SRI to bill two customers for utility service (Staff Ex. 4.00 (Marr Rebuttal) at 10-30) – yet Staff inexplicably proposes such a requirement in the alternative. As explained further below, Staff's alternative proposal must be rejected for the following reasons: (1) SRI's billing systems cannot support a billing scheme whereby individual timeshare members are billed for utility service, and it would cost upward of \$535,437 to implement such a system;⁹ (2) individually billing Fox River Resort timeshare members would result in those timeshare members subsidizing timeshare members of other SRI resorts who choose to stay at Fox River Resort under the Exchange, Bonus Time, and/or Day Usage Programs; (3) SRI would have no means to compel individual timeshare owners to pay utility bills; and (4) billing timeshare owners for utility service would be detrimental to SRI's timeshare business in that, among other things, it would open SRI to breach of contract suits by timeshare owners. Aside from the above, the charges that Staff proposes SRI be required to bill timeshare members, Thousand Trails members, and Fox River Sales and

⁹ The billing system's cost of conversion is almost as much as the combined stipulated water and sewer revenue requirements for the whole year. Staff Ex. 4.00 (Marr Rebuttal) at 26.

Member Services fail to give SRI a reasonable opportunity to earn the required return; therefore, those proposed charges are unlawful and unconstitutionally confiscatory. For these reasons, Staff's third alternative proposal must be rejected.¹⁰

a. SRI's Billing Systems Cannot Support A Billing Scheme Whereby Individual Timeshare Members, Thousand Trails Members and Fox River Sales and Member Services Are Billed For Utility Service

It is impossible for SRI to bill individual timeshare members or Thousand Trails members for water and sewer service using its existing billing system. SRI Ex. 7 (White Supplemental Rebuttal) at 14. Among other reasons, SRI's utility billing system can only handle a single flat rate for water and sewer service; it is not capable of handling tiered rates, as Staff's alternative proposal would require. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 14. Moreover, SRI's utility billing system is incapable of determining who has been staying at Fox River Resort or other SRI resorts at any given time – which makes it impossible to track customers for billing purposes. SRI Ex. 7 (White Supplemental Rebuttal) at 14. The SRI Utility Department has a billing system and an accounting system associated with that billing system that is used strictly for utility purposes. *Id.* Julie Westmoreland operates that system out of SRI's Flint, Texas office. *Id.* Silverleaf Club (not SRI) maintains a separate billing, accounting, and collections system for timeshare dues in Dallas, Texas. *Id.* Silverleaf Club also has a very detailed reservation system in Kimberling City, Missouri, which supports the Bonus Time Program. *Id.* SRI's utility billing system does not interface with Silverleaf Club's timeshare dues collections

¹⁰ Notably, Staff does not propose that timeshare members, Thousand Trails members, and Fox River Sales and Member Services be billed for their actual usage. Nor would it be possible for SRI to do so, because none of the service connections (including the individual timeshare units) at Fox River Resort are individually metered. SRI estimates that it would cost approximately \$8,570,118 to add such meters. Staff Ex. 4.00 (Marr Rebuttal) at 26. That figure does not even take into consideration the disruption to SRI business that would result from the installation of meters.

system or Silverleaf Club's timeshare reservation system, and therefore cannot track and bill individual timeshare members for utility service. *Id.* Staff does not disagree. Staff Ex. 4.00 (Marr Rebuttal) at 24 ("The SRI utility billing system does not interface with the SRI timeshare sale and collection system. . . . This would make it difficult and infeasible to track individual Fox River Resort timeshare owners for purposes of utility service billing");¹¹ *id.* at 25 ("With the current utility billing system, it is not possible for the SRI Utility Department to track Fox River Resort timeshare owners at any given time").

It would be extremely expensive for SRI to develop the computer technology to track the users of Fox River Resort so that they could be directly billed for water and sewer service, and there would be no benefit from doing so. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 15; SRI Ex. 7 (White Supplemental Rebuttal) at 15. In response to data request WDM 4.01, SRI estimated that it would incur costs totaling approximately \$535,437 if it were ordered to directly bill individual Fox River Resort timeshare owners for water and sewer service. Staff Ex. 4.00 (Marr Rebuttal) at 24-26. This estimate includes the following: \$201,882 to replace SRI's utility billing system; \$81,970 for additional personnel; \$10,398 in additional office expenses; \$100,000 additional expenses for uncollectibles; \$125,000 in billing and collection; and \$16,187 for additional office equipment. This total cost excludes any additional cost to install meters, which SRI estimated at \$8,570,119. Staff does not dispute these estimates. *Id.*

It would make no sense to require a corporation such as SRI to incur these substantial costs just so it could bill individual timeshare members for utility service, particularly given that Staff has not identified any benefit to individually billing timeshare members. In fact, Staff itself

¹¹ While Staff's statement that the systems do not interface with one another is correct, Staff incorrectly suggests that the timeshare reservation and dues collections systems belong to SRI. They do not. Those systems are owned and operated by Silverleaf Club. SRI Ex. 7 (White Supplemental Rebuttal) at 14.

concedes that requiring such system changes would have little, if any, benefit. Staff Ex. 4.00 (Marr Rebuttal) at 24 (stating that “SRI would need to make expensive changes to its utility billing system with limited benefits”). Staff recognizes that the best approach is for SRI to bill two customers (Silverleaf Club and Fox River Sales and Member Services) for utility services (Staff Ex. 4.00 (Marr Rebuttal) at 10-30), and that individually billing timeshare members is not necessary because “timeshare owners can protect their own interests by the private contracts” (*id.* at 8).

Notably, the additional cost to develop a system capable of directly billing timeshare members for water and sewer service is not included in the revenue requirement agreed to by the parties. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 15. Indeed, the costs associated with maintaining a special billing system was not included in the cost of service calculation of SRI witness Matthew Ennis or Staff witness Mary Everson. *Id.* Nevertheless, if the Commission imposed such a requirement, SRI would have to be allowed to recover the costs of developing and operating the new billing system. *Id.* But if such additional costs were included in the calculation of the revenue requirement, it would result in a substantial increase in the charges proposed by Staff. Staff Ex. 4.00 (Marr Rebuttal) at 25-26. Of course, SRI would prefer not to send any utility bills to timeshare members – much less the higher bills the would result from any requirement to change SRI’s billing systems – because doing so would be harmful to business. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 15.

b. Individually Billing Fox River Resort Timeshare Members Would Result In Those Timeshare Members Subsidizing Timeshare Members Of Other SRI Resorts That Choose To Stay At Fox River Resort Pursuant To The Exchange, Bonus Time, And/Or Day Usage Programs

Even if SRI could afford to implement a system to bill individual timeshare members for utility service, Staff's proposal to bill Fox River Resort timeshare members for utility service is unfair, as it would require Fox River Resort timeshare members to subsidize timeshare members of other SRI resorts that choose to stay at Fox River Resort under the Exchange, Bonus Time, and/or Day Usage Programs.

As explained in Part III.B above, under the Exchange Program, a Fox River Resort timeshare member may choose to stay at a different SRI resort for his/her one week of the year, and timeshare members of other SRI resorts may choose to spend their one week vacation at Fox River Resort instead of their home base resort. SRI Ex. 4 (Lahart Amended Rebuttal) at 4; SRI Ex. 6 (Lahart Supplemental Rebuttal) at 8. And under the Bonus Time Program, timeshare owners at other SRI resorts may choose to stay at Fox River Resort during other times of the year. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 8-11; SRI Ex. 7 (White Supplemental Rebuttal) at 4-5. There are over 100,000 SRI timeshare owners, approximately 50% of whom choose to stay at resorts other than (or in addition to) their home base resort where they own their timeshare interval. *Id.* In addition, under the Day Usage Program, any SRI resort member can use the amenities at Fox River Resort at any time without scheduling an overnight stay. *Id.*

Staff's proposal would have Fox River Resort timeshare members paying for utility service enjoyed not only by the Fox River Resort timeshare members, but also by potentially thousands of other SRI timeshare owners via the Exchange, Bonus Time, and Day Usage Programs. *Id.* The inequity of requiring Fox River Resort timeshare members to pay for utility

service enjoyed by potentially thousands of other SRI timeshare members is made worse by the fact that, under the Exchange and Bonus Time Programs, Fox River Resort timeshare members might not even stay at Fox River Resort during a given year; rather, they may choose to stay at a different SRI resort. *Id.* However, under Staff’s proposal, Fox River Resort timeshare members would be billed for utility service at Fox River Resort even though they did not stay at the resort and thus did not use any utilities.

Ironically, Staff itself recognizes that directly billing individual Fox River Resort timeshare members for utility service would be “unfair because the cost causers are not necessarily those who pay for the cost” (Staff Ex. 4.00 (Marr Rebuttal) at 21) and, more specifically, would be “a disadvantage to Fox River Resort timeshare owners because other Silverleaf Club members from other SRI resorts are allowed to use the Fox River Resort” (Staff Ex. 4.00 (Marr Rebuttal) at 34).

c. If SRI Were Required To Bill Individual Timeshare Members For Water And Sewer Service, It Would Have No Means To Compel Payment Of Those Bills.

If SRI is required to directly bill timeshare owners for utility service – a radical departure from how SRI (and other timeshare resorts) traditionally operates and how timeshare members are accustomed to dealing with SRI – SRI foresees a high uncollectible rate as it would have no means to enforce the collection of utility bills. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 19-20; SRI Ex. 7 (White Supplemental Rebuttal) at 15. Staff does not disagree: “SRI would have no way to enforce the collection of utility bills if they were sent to individual Fox River Resort timeshare owners,” because neither “disconnection of service” nor “denial of access to a timeshare unit [can] be used as a means to collect past-due utility bills.” Staff Ex. 4.00 (Marr Rebuttal) at 26-27.

More specifically, disconnection of service cannot be used as a means to collect past-due utility bills for two reasons. *First*, the plumbing at Fox River Resort does not permit SRI to disconnect utility service to a particular timeshare unit. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 20. *Second*, even if service to the individual timeshare units could be disconnected, the same unit can potentially be used by as many as 52 interval owners – each having the right to occupy the unit for one week out of the year. *Id.* at 19-20. SRI cannot disconnect service to a unit because one interval owner failed to pay his/her utility bill – the other interval owners have a right to utility service during their stay. *Id.* at 20. Simply put, disconnection of service is not an option to compel payment. *Id.*

In addition, SRI cannot deny a timeshare owner access to his/her timeshare unit as a means to collect past-due utility bills. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 19. If the utility bill is not paid, but the membership dues are paid, SRI has no recourse against the timeshare owner who has failed to pay the utility bill. *Id.* Having paid the dues, the timeshare member delinquent on utility payments still has the right to access his/her unit. *Id.* In fact, under the timeshare owner's contract, utility service is supposed to be one of the many benefits included in the purchase of a timeshare unit and the payment of monthly membership dues. *Id.*; SRI Ex. 7 (White Supplemental Rebuttal) at 16.

d. Billing Individual Timeshare Members For Utility Service Would Be Detrimental To SRI's Timeshare Business.

Requiring SRI to individually bill timeshare members would be detrimental to SRI's timeshare business for several reasons.

First, if SRI attempted to collect utility expenses directly from timeshare members, it could lead to disputes regarding the timeshare members' contracts. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 19; SRI Ex. 7 (White Supplemental Rebuttal) at 16. Contractually,

utility service is supposed to be one of the many benefits included in the purchase of a timeshare and the payment of dues; it is not to be paid for by a separate state-ordered bill. *Id.* Requiring SRI to separately bill timeshare members essentially requires SRI to breach its contracts with those timeshare members. *Id.* Fox River Resort timeshare members potentially could file (either individually or as a class action) a lawsuit against SRI for breach of contract. Staff Ex. 4.00 (Marr Rebuttal) at 28. Or Fox River Resort timeshare members could file a lawsuit against the Commission for unlawful interference with their private timeshare sales contracts. *Id.*

Second, the timeshare business is highly competitive. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 6. There are several timeshare resort options available to potential purchasers, and those potential purchasers make their decision on where to buy a timeshare based in part on costs. SRI Ex. 6 (Lahart Supplemental Rebuttal) at 13. If SRI directly billed timeshare owners for utility service, it would discourage potential timeshare purchasers from buying a timeshare at Fox River Resort. *Id.* Instead, potential timeshare members would buy a timeshare from some other entity or not at all. *Id.* Staff itself acknowledged that “[d]irect billing of individual Fox River Resort timeshare owners for utility services could encourage timeshare owners to purchase timeshares at SRI resorts other than Fox River Resort so as to avoid the additional cost arising from utility bills.” Staff Ex. 4.00 (Marr Rebuttal) at 21.

e. Staff’s Proposed Alternative Charges Fail to Give SRI A Reasonable Opportunity To Earn The Required Return And Therefore Are Unlawful And Unconstitutionally Confiscatory.

Staff’s proposed alternative charges for water and sewer service have no relationship to the revenue requirements for those services, and would not give SRI a reasonable opportunity to earn the required return. Those proposed charges therefore would be unlawful and unconstitutionally confiscatory. *Bloom Township High School v. Illinois Commerce*

Commission, 722 N.E.2d 676, 686 (1999) (“The theory behind the regulation of public utilities is the protection of the public and the assurance of adequate service while, at the same time, securing for the utility a fair opportunity to generate a reasonable return”); *Bluefield Waterworks & Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679, 692, 693 (1923); (“A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties”).

Under Staff’s alternative proposal, Thousand Trails members would be required to pay \$2.00 for water service and \$5.33 for sewer service every time they visited (and only when they visited) Fox River Resort. Staff Ex. 4.00 (Marr Rebuttal) at 30-31; Tr. at 99. The record, however, is void of any evidence concerning the total number of Thousand Trails members. Tr. at 99. Nor does the record contain any evidence about how frequently Thousand Trails members visit Fox River Resort. *Id.* at 99-100. Thus, there is no way to determine how much toward the revenue requirement SRI would recover from Thousand Trails members. If, for example, no Thousand Trails members stayed at the resort in any given month, SRI would recover nothing toward the revenue requirement.

With respect to Fox River Resort timeshare members, Staff’s proposal would require every timeshare member to pay \$14.01 a year for water service for their one-week interval and \$37.43 a year for sewer service for their one-week interval – regardless of whether they actually stayed at Fox River Resort. Staff Ex. 4.00 (Marr Rebuttal) at 30-31; Tr. at 101-103.

Theoretically, each timeshare unit could have as many as 52 interval “owners” (if the unit is sold every week out of the year) for a total of 9,672 interval owners. SRI Ex. 4 (Lahart Amended

Rebuttal) at 8. In reality, the number will be less than 9,672, because not all units have all 52 weeks of vacation intervals sold for the year. *Id.* As Staff concedes, the number of timeshare members could fluctuate greatly in any given month or year. Tr. 101. And the exact number of timeshare owners can only be known after the fact at a specific point in time, because the number could change on a monthly basis as units are sold to and by timeshare members, and as timeshare contracts are defaulted causing units to go back on the market. Staff Ex. 4.00 (Marr Rebuttal) at 23 (“The number of timeshare owners-members at Fox River Resort, and the other SRI resorts, is constantly changing as a timeshare unit is sold or a timeshare member defaults on payments”). See also SRI Ex. 4 (Lahart Amended Rebuttal) at 8. Because the number of timeshare members will change constantly, under Staff’s proposal it is impossible to determine how many timeshare members will be billed for utility service in any given month – which means there is no way to determine how much SRI will recover toward the revenue requirement.

With respect to Fox River Sales and Member Services, Staff proposes that SRI bill \$60.71 per month for water service to each of two connections, and \$162.18 per month for sewer service to each of two connections. Staff Ex. 4.00 (Marr Rebuttal) at 30-31; Tr. at 102. This would mean that SRI would recover \$1,457.04 for water service ($\$60.71 \times 2 \text{ connections} \times 12 \text{ months}$), and \$3,892.32 for sewer service ($\$162.18 \times 2 \text{ connections} \times 12 \text{ months}$) from Fox River Sales and Member Services.

Under Staff’s alternative proposal, even assuming SRI could track the changing number of timeshare owners, SRI would not come close to earning the required return. For example, at the time Supplemental Rebuttal Testimony was filed in this case, there were 8,700 timeshare owners at Fox River Resort (SRI Ex. 6 (Lahart Supplemental Rebuttal) at 9), which means that SRI would recover only \$121,887 ($8,700 \times \14.01) of the \$150,085 revenue requirement for

water service and \$325,554 (8,700 x \$37.42) of the \$400,908 revenue requirement for sewer service if those timeshare owners could be billed today. Even adding the amount collected from Fox River Sales and Member Services (\$1,457.04 for water service and \$3,892.32 for sewer service), SRI would not come close to earning the required return.

Moreover, even assuming all 52 weeks of the year were sold for every unit (which has never happened), SRI would recover only \$135,504.72 (9,672 x \$14.01) of the total \$150,085 revenue requirement for water service from timeshare members. And for sewer service, again assuming that all 9,672 intervals were sold, SRI would recover only \$361,926.24 (9,672 x \$37.42) of the total \$400,908 revenue requirement from timeshare members. Again, even adding the amount collected from Fox River Sales and Member Services (\$1,457.04 for water service and \$3,892.32 for sewer service), this totals only \$136,961.76 and \$365,818.56 toward the \$150,085 revenue requirement for water and the \$400,908 revenue requirement for sewer service, respectively. It goes without saying that the \$2.00 potentially recovered from Thousand Trails members could not make up the difference. Because Staff's proposed charges fail to give SRI a reasonable opportunity to earn the required return, those charges must be rejected.¹²

¹² Notably, it is no answer to the cost recovery problem discussed above to require SRI to bill SRI timeshare members who actually stay at Fox River Resort. As Staff itself acknowledges, "[g]iven the manner in which Silverleaf Club budgets and sets membership dues, it would be extremely difficult to track and bill Fox River Resort timeshare owners for the direct costs of operating the Fox River Resort. It would be even more difficult to bill the Fox River Resort timeshare owners for a particular operating costs, such as the cost of water and sewer service, at Fox River Resort." Staff Ex. 4.00 (Marr Rebuttal) at 22. See also Staff Ex. 4.00 (Marr Rebuttal) at 11 ("Silverleaf Club has neither directly assigned nor allocated utility services operating expenses to each service connection," therefore "it would be nearly impossible to allocate the utility charges between the individual timeshare units of each building and the usage of amenities by the timeshare owners").

V. CONCLUSION

For the above reasons, SRI respectfully requests that the Commission find that SRI is not a public utility subject to the Commission's jurisdiction and that Certificates of Public Convenience and Necessity are not needed for SRI to provide water and sanitary sewer service at a charge to Fox River Resort. Alternatively, SRI requests that the Commission find that the Section 8-406 requirements for certification have been met and issue SRI Certificates of Public Convenience and Necessity to provide water and sewer service. In addition, SRI requests that the Commission approve its proposal to bill two customers – Silverleaf Club and Fox River Sales and Member Services – for the water and sewer service it provides to Fox River Resort.

Respectfully submitted,

Silverleaf Resorts, Inc.

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**ILLINOIS COMMERCE COMMISSION
RESPONSE TO STAFF DATA REQUESTS**

**SILVERLEAF RESORTS, INC.
DOCKET NO. 01-0827**

Responsible Party/Witness:

WDM-3.01 Referring to the Amended Rebuttal Testimony of Ms. Westmoreland, Page 5 of 14, Lines 16-19, Ms. Westmoreland stated that "there are also campground spaces and cabins at the Fox River Resort that will consume utility services. The occupant of a timeshare unit is not likely to also be using one of these spaces yet Mr. Marr would have them pay for utility services to such spaces."

- a. Would you agree that the campsites and cabins (as well as many other amenities at the Fox River Resort) are dedicated exclusively for use by club members? If you do not agree, explain with specificity the factual basis for your disagreement. Provide any supporting documentation.

Response: With one exception, timeshare members from the twelve SRI resorts are the only persons who are allowed to use the timeshare units and campsites (timeshare members are not allowed to rent cabins). The one exception is Thousand Trails members – who are entitled to use the campsites and cabins, but not the timeshare units. As Silverleaf Resorts explained in response to data request WD-011, in 1997, Silverleaf Resorts, Inc. purchased the property where Fox River Resort is now located from Thousand Trails. An agreement was made by Silverleaf Resorts, Inc. to continue to honor existing Thousand Trails members' privileges to use the campgrounds and cabins for a period of ten years from August 1997. At the Fox River Resort campground guardhouse, there is a computer that is tied into the Thousand Trails reservations system, which notifies Fox River Resort of incoming Thousand Trails campers or cabin users. In addition to the Thousand Trails campers, Fox River Resort also offers camping as an amenity to timeshare owners at Fox River Resorts. The cabins may only be used by Thousand Trails members.

The point of Ms. Westmoreland's testimony is that, under Staff's proposals, Fox River Resort timeshare members would have to pay the entire utility costs associated with the campgrounds even though timeshare members at other resorts, as well as Thousand Trials members, would also be using those facilities.

See also response to MHE-5.07 and MHE-5.12

- b. Would you also agree that the timeshare owner would be using either the timeshare unit, campsite, or cabin for an overnight stay? If you do not

connections, 1 registration connection, 2 swimming pools, and 1 picnic area restroom.

The only connections at the resort that will be billed to Fox River Sales & Member service are the buildings where the sale of timeshare units takes place and where tours are arranged. As such, two (2) registration connections are billed to Fox River Sales & Member Services.

c. Would you agree that the bill sent by the Utility Department for the common areas will be paid by the Silverleaf Club (timeshare owners)?

Response: Yes. Silverleaf Club will be billed for utility service to common areas. We again note, however, that Staff's proposal would require Fox River Resort timeshare members (and only Fox River Resort timeshare members) to directly pay the utility costs associated with these areas. If Silverleaf Club is billed for utility service, the expenses will be spread across all timeshare members – which makes sense given that all timeshare members can utilize the facilities at Fox River Resort.

CERTIFICATE OF SERVICE

I, Kara K. Gibney, hereby certify that on this 25th day of February, 2004, I caused the foregoing Brief of Silverleaf Resorts, Inc. to be served on all parties listed below by e-mail and overnight mail.

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